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Federal Communications Commission  
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August 21, 1992

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Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

ATTN: The Honorable Edward J. Kuhlmann  
Administrative Law Judge

RE: Central Florida Educational Foundation, Inc., et. al., MM  
Docket No. 92-33

Dear Ms. Searcy:

Transmitted herewith, on behalf of Central Florida Educational Foundation, Inc., is an original and six copies of its "Reply Findings of Fact and Conclusions of Law" filed in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: Joseph E. Dunne III  
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Attorney for Central Florida  
Educational Foundation, Inc.

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AUG 21 1992

Federal Communications Commission  
Office of the Secretary

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 92-33
	)	
CENTRAL FLORIDA EDUCATIONAL	)	File No. BPED-881207MA
FOUNDATION, INC.	)	
Channel 203C3	)	
Union Park, Florida	)	
	)	
BIBLE BROADCASTING NETWORK, INC.	)	File No. BPED-890412MJ
Channel 202C2	)	
Conway, Florida	)	
	)	
SOUTHWEST FLORIDA COMMUNITY	)	File No. BPED-891127MC
RADIO INC.	)	
Channel 202C2	)	
Conway, Florida	)	
	)	
HISPANIC BROADCAST SYSTEM, INC.	)	File No. BPED-891128ME
Channel 202C3	)	
Lake Mary, Florida	)	
	)	
For Construction Permit for a	)	
New Noncommercial Educational FM	)	
Station	)	

TO: The Honorable Edward J. Kuhlmann  
Administrative Law Judge

**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Central Florida Educational Foundation, Inc. (CFEF), by its undersigned attorney and pursuant to section 1.264 of the Commission's Rules, 47 C.F.R. § 1.263 (1992), hereby submits its "Reply Findings of Fact and Conclusions of Law" in compliance with the Presiding Officer's Order, FCC 92M-810 (released July 23, 1992). As grounds for its reply, CFEF shows and states as follows.

1. Hispanic concedes in its findings (hereinafter "Hisp. Fdgs. ¶ \_\_") that "Central Florida is entitled to a preference for its superior second service (Fdgs. ¶ 38)," but goes on to argue

that "this preference must be weighed against other factors bearing on the 307(b) determination... (Hisp. Fdgs. ¶ 38)." There are, however, according to FCC policies and precedents, no other factors which are relevant to the 307(b) determination in this case.

2. Hispanic, for example, argues that its proposal to serve 64,000 Hispanics should be considered as part of the 307(b) analysis (Hisp. Fdgs. ¶ 39). If that contention were consistent with the law then CFEF should be entitled to the preference, rather than Hispanic, because CFEF will serve 5,335 more Hispanics than Hispanic, and also proposes to broadcast significant amounts of Spanish-language programming (CFEF Fdgs, ¶ 12).

3. Hispanic also argues, however, that it is entitled to a 307(b) preference because CFEF's programming doesn't comply with section 73.502 of the Commission's rules because its programming must be "bible-based" and that, CFEF, therefore, is "precluded from offering secular instructional programming (Hisp. Fdgs. ¶ 41)." CFEF's alleged limitation to "bible-based" programming purportedly prohibits CFEF from meeting the "secular objectives of a state-wide plan for higher education (Hisp. Fdgs. ¶ 42)." In making these arguments Hispanic is overlooking a number of pertinent facts.

4. The first is that Hispanic concedes that there is no precedent for applying section 73.503 in conjunction with any 307(b) determination (Hisp. Fdgs. ¶ 42). Moreover, in questioning whether CFEF's objectives are too sectarian, Hispanic is, in essence, attempting to raise an issue concerning CFEF's eligibility to be the licensee of a noncommercial station. However, CFEF's

articles of incorporation were filed as an exhibit to its original construction permit application (Exhibit no. one, BPED-881207MA, official notice requested), and that exhibit was presumably reviewed by the Commission in the preparation of the Hearing Designation Order (HDO), but the Commission found CFEF qualified to be a noncommercial licensee, see, Hearing Designation Order, ¶ 12. Once the Commission staff has reviewed and considered the qualifications of an applicant in a Hearing Designation Order other Commission officials may not reverse that determination absent the submission of new evidence. See, e.g. Atlantic Broadcasting Company, 4 F.C.C.2d 943, 8 R.R.2d 599 (Rev. Bd. 1966).

5. Moreover, Hispanic's argument that section 307(b) objectives aren't met because CFEF's programming must be "bible-based" ignores the record evidence, including: of CFEF's specified objectives, only one of eight is even vaguely sectarian (objective 6, see CFEF Fdgs. ¶ 16); CFEF's proposal to broadcast many, many hours of specifically identified secular programming, including local news, public affairs, weather, and sports (CFEF Fdgs. ¶ 24); and, CFEF's proposal to broadcast Seminole County Public School's instructional programming (CFEF Fdgs. ¶ 17) as well as provide Seminole County Public School students with instructional opportunities in an internship program which will involve students in the production of news segments highlighting the activities of specific Seminole County schools (CFEF Fdgs. ¶ 18). Finally, Hispanic's argument truly founders on CFEF's Spanish-language program proposal, which includes local news, weather and sports in

Spanish, as well as two hours of programming a night which is clearly secular in nature and which is designed to be directly responsive to ascertained community needs (CFEF Fdgs. ¶ 20).

6. Most importantly, however, the Commission has held that an applicant's proposed program format, even if it purports to serve an underserved minority, is not a factor which is considered in evaluating an applicant's proposal under section 307(b). See, Suburbanair, Inc., 104 F.C.C.2d 909, 60 R.R.2d 1325, 1332 (Rev. Bd. 1986). Nor, for that matter, is the minority ownership of a proposed licensee to be considered under section 307(b). Id.

7. Hispanic is correct however in stating that "the case may be resolved on the basis of the 307(b) issue (Hisp. Fdgs. ¶ 47). The HDO makes the comparative issue contingent on the resolution of the 307(b) issue. The "decisive" advantage which CFEF garners for its 33 percent superiority in second service, a superiority which fulfills Commission allocation priorities, results in a dispositive preference for CFEF (Mass M. Bur. Fdgs. ¶ 3).

8. Hispanic also argues that an imposed share-time is in the public interest, and proposes a share-time arrangement in which it would receive the hours of 3:00 p.m. to 3:00 a.m. (Hisp. Fdgs. ¶ 46). This imposed share-time will serve the public interest, Hispanic contends, because Hispanic will provide the first Hispanic radio service in the market (Hisp. Fdgs. ¶ 44).

9. In making such arguments, however, Hispanic overlooks or ignores some critical facts. The first and most obvious is that a share-time cannot be in the public interest in light of the

dispositive 307(b) preference which must be accorded CFEF (Mass M. Bur. Fdgs. ¶ 3). Unless the Commission is willing to sacrifice second aural service to almost 46,000 people, the second most important 307(b) consideration which the Commission recognizes, an imposed share-time agreement cannot serve the public interest.

10. Even if the Commission were to ignore CFEF's dispositive 307(b) preference, Hispanic's argument that the public interest requires a share-time is unsupported by the record. In fact, other than Hispanic's statement that it would provide the first Hispanic radio service in the market, the record is bereft of any evidence concerning the public interest served by a share-time except the statements of various applicants that they would, or would not, participate in a share-time (CFEF Fdgs. ¶ 9). Even Hispanic's argument that it would provide the first Hispanic radio service in the market begs the question. CFEF will also provide the first real Hispanic programming in the market, including substantial amounts of Spanish-language programming, most of which is locally produced and all of which is specifically designed to meet the problems, needs and interests of the Hispanics in the proposed service area (CFEF Fdgs. ¶ 20). Moreover, not only does CFEF propose substantial amounts of programming, it also proposes a 24 hour a day Spanish language service on its subcarrier (CFEF Fdgs. ¶20), and its Spanish-language programming will be received by over 5,300 more Hispanics than Hispanic's programming (CFEF Fdgs. ¶ 12).

11. The fact that CFEF and Hispanic both propose to broadcast Spanish-language programming does not mean that it is appropriate, feasible, or in the public interest to impose a share-time on the two applicants--rather the contrary. The record shows that in all instances the number of Hispanics in either CFEF's or Hispanic's service area is extremely small--roughly 64,000 in Hispanic's, almost 70,000 in CFEF's. These raw numbers must be reduced somewhat by the number of Hispanics whose primary language is not Spanish, leaving an extremely small potential Spanish-language audience for a class C FM facility with a total population coverage of over 500,000 people. To make a program service to such a potentially small audience economically feasible the licensee must have access to the maximum amount of desirable hours within which to broadcast programming of more general interest, or attractive to a wider audience, to be able to economically support Spanish-language programming designed to appeal to a smaller, presumptively less affluent audience. Splitting the broadcast day up between two licensees in the hope that one or both will provide broadcast service to an extremely small and less affluent minority almost certainly will result in denying both licensees the economic support for specialty programming designed to appeal to a smaller audience, and divide the broadcast day in a way which will make both stations economically infeasible.

12. A share-time between two noncommercial applicants, even with the most hearty cooperation, inevitably results in the purchase of redundant studio and production equipment, the

confusion of audience, discontinuity in programming, and additional difficulty in attracting and building audience loyalty (CFEF Fdgs. ¶ 31). Moreover, these burdens would be imposed on a broadcast service which the Commission has historically and repeatedly recognized as financially limited, if not financially marginal. A share-time only increases costs, increases redundancy, and halves, at least, the licensee's access to the most desirable, and saleable broadcast hours.

13. The share-time proposed by Hispanic here is also ludicrous. How is any other licensee, unless it be strictly an educational institution proposing only instructional programming, to survive if Hispanic is allocated both the afternoon drive-time and most valuable evening hours? Hispanic's proposal is not a share-time proposal at all, it is a recipe for the Commission and the service area to be limited to the service of half a licensee, if that.

14. When it turns to its analysis of the comparative issues Hispanic indulges, on occasion, in gross and disingenuous distortions of the record evidence. For example, Hispanic states that its objective is to serve the Hispanic population of the Orlando area while CFEF's "objective is to serve the Orlando community with Bible-based programming (Hisp. Fdgs. ¶ 50)." The only support for that statement is in Hispanic's fantasy record--the hearing record is replete with record evidence of CFEF's eight objectives, its detailed and specific program proposals, its instructional plans and proposals with non-sectarian educational



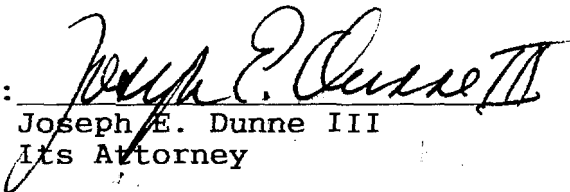
institutions, etc. Similarly, whereas Hispanic avers that CFEF "... has not demonstrated a need in the community for such programming..." (Hisp. Fdgs. ¶ 50), CFEF's actual program proposal, specifically including its Spanish-language program proposal, was designed to be responsive to the ascertained needs of the community (CFEF Fdgs. ¶¶ 20, 22-23). Hispanic, by way of contrast, not only hasn't proposed specific programs of any kind, it has not made any effort to relate its "Hispanic" program proposal to any specific community problem or need mentioned in Hispanic's own studies (Compare Hispanic program proposal in CFEF Fdgs. ¶ 11 with "needs study" in CFEF Fdgs. ¶ 13).

15. As Hispanic ignored the record evidence in characterizing CFEF's objectives, Hispanic also mischaracterizes the record evidence in stating that both applicants set forth their objectives, how they proposed to meet those objectives, and their ability to effectuate their plans (Hisp. Fdgs. ¶ 49). The record shows that Hispanic's "objective" is extremely broad as well as vague, and that there is not a single shred of evidence concerning how Hispanic intends to effectuate its objective--how it plans to manage or operate the station--as opposed to the general qualifications of its principals. Moreover, there is no evidence to suggest how Hispanic's principals would go about inaugurating a new radio format for a small specialty audience in a strange radio market far from their home in a radio service--noncommercial radio--in which they are all neophytes (CFEF Fdgs. ¶ 14). By way of contrast, CFEF has specific and articulate objectives, a management

plan for implementing those objectives which includes the daily involvement of two of its principals, and a proposal which draws on the long local broadcast experience of two of its principals in the market place and which builds on those principals' existing programs and intership involvements. An objective view of the record evidence shows that CFEF warrants a solid preference under this issue (CFEF Fdgs. ¶ 34).

**WHEREFORE**, the foregoing premises considered, Central Florida Educational Foundation, Inc. respectfully urges the expeditious grant of its above-captioned application.

**CENTRAL FLORIDA EDUCATIONAL  
FOUNDATION, INC.**

By:   
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Its Attorney

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CERTIFICATE OF SERVICE

I, Glinda Corbin, a paralegal in the law offices of May & Dunne, Chartered, hereby certify that I have caused to be sent this 21st day of August 1992, via first class U.S. mail, postage prepaid, a true and correct copy of the foregoing REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following:

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